

**Office of Chief Counsel
Internal Revenue Service**

memorandum

CC:LM:FSH:SL:MAN:TL-N-93-01
AHintermeister

date: February 15, 2001
to: Henry V. Singleton, Acting Territory Manager
Attn: Revenue Agent Dennis Whalen

from: Area Counsel
(Financial Services and Healthcare:Manhattan)

subject: [REDACTED]
Request for Assistance

DISCLOSURE STATEMENT

This advice may contain return information subject to I.R.C. § 6103. This advice may contain confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination, Appeals, or Counsel recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or Counsel or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representative.

This advice is not binding on Examination of Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the Field Office with jurisdiction over the case.

Analysis

This opinion is based upon the facts set forth herein. It might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon. You should be aware that, under routing procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from the

office, which should be in approximately 10 days. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

We refer to the draft summons addressed to [REDACTED] Vice-President of [REDACTED] provided by Revenue Agent Dennis Whalen to our office for review and to our January 23, 2001 memorandum to your office concerning the issuance of summonses in this case. Revenue Agent Whalen told us he suspected that the taxpayer was involved in tax shelter transactions involving its sole shareholder, a trust, and [REDACTED]. For that reason, we suggest adding specific language (set forth in the attached draft summonses) requesting documents pertaining to the taxpayer's dealings with these entities. We had also suggested that you consider service of summonses directly on [REDACTED], the trust and on [REDACTED] to obtain documents from custodial witnesses and also on trustee [REDACTED]. Service of these additional summonses will ensure that all relevant documents are produced and may avoid problems if [REDACTED] cannot be personally served. Of course, you may choose to serve [REDACTED] first and then serve additional summonses later, if required. All contracts or other agreements, correspondence, memoranda and all other documents and records relating to transactions or communications between [REDACTED] and either (1) the [REDACTED] EIN __ or (2) [REDACTED] [full name] or any related entities.

Attached is a copy of the draft summons with suggested changes for the [REDACTED] summons as well as each of the other four summonses discussed above. We note the following procedural issues:

1. Determine the address of [REDACTED] and the [REDACTED]. It appears from an attachment to the tax return that there is more than one [REDACTED] so use the EIN when referring to the trust in issue here.
2. Use [REDACTED]'s full name.
3. Summonses addressed to [REDACTED], [REDACTED] and the trust require the entity served to provide a custodial witness to search for and produce the documents described in the summons. They can be served on a corporate officer or a person authorized to accept service of summonses on behalf of the corporation.
4. Summonses to named individuals ([REDACTED]) must be served personally or by leaving the summons at their "last and usual place of abode" or residence.
5. The [REDACTED] summonses should require the witness

to appear no less than 11 days after service.

6. The remaining summonses are third-party summonses under I.R.C. §7609, requiring the Service in this case to provide notice of these summonses to [REDACTED]. The notices can be mailed. §7609(a)(2). The time for appearance must be at least 24 days after service of the notice to the taxpayer. §7609(a)(1). As we stated in our earlier memorandum, section 7602(c)(1) requires reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

If you need any further assistance, please contact Anne Hintermeister, the attorney handling the case in our office, at 212-264-8021, ext. 312.

ROLAND BARRAL
Area Counsel
(Financial Services and
Healthcare: Manhattan)

By: _____
PAULETTE SEGAL
Associate Area Counsel
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